

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 25, 2011

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SENATE BILL

No. 734

Introduced by Senator ~~Price~~ DeSaulnier

(Principal coauthor: ~~Assembly Member Galgiani~~)

(Coauthor: Senator Alquist)

(Coauthors: ~~Assembly Members Buchanan, Furutani, Bonnie Lowenthal,
and Solorio~~)

February 18, 2011

~~An act to amend Section 14838.1 of, and to add Section 14838.6 to, the Government Code, and to amend Section 185033 of the Public Utilities Code, relating to small business. An act to add Section 14211 to the Unemployment Insurance Code, relating to workforce development.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 734, as amended, ~~Price DeSaulnier. High-Speed Rail Authority: small business program: bidding preferences. State and local workforce investment boards: funding.~~

The federal Workforce Investment Act of 1998 provides for workforce investment activities, including activities in which states may participate. Existing law establishes the California Workforce Investment Board (CWIB), and specifies that the CWIB is responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system. Existing law contains various programs for job training and employment investment, including work incentive programs, as specified, and establishes local workforce investment boards to perform various duties related to the implementation and coordination of local workforce investment activities.

This bill would require local workforce investment boards to spend a certain percentage of available federal funds for adults and dislocated workers on workforce training programs in a manner consistent with federal law, as prescribed, and would allow the boards to leverage specified funds to meet the funding requirements, as specified.

Existing law prescribes the duties of the CWIB with regard to the development and implementation of local workforce investment plans, as specified.

This bill would require a local workforce investment board that does not meet the expenditure requirements described above to provide the Employment Development Department with a corrective action plan regarding those expenditures.

Because the bill imposes new duties on local government workforce investment boards, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

~~Existing law provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, and sets forth the duties of the Director of General Services and the directors of other state agencies in this regard.~~

~~Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes.~~

~~This bill would require the authority, with the assistance of the Department of General Services, to prepare a small business, microbusiness, and disabled veteran business outreach and retention plan by July 31, 2012, in order to ensure that the authority annually meets the small business participation goals established by Executive Order S-02-06.~~

~~This bill would require the authority to hold a hearing on the draft plan at least one month before the board meeting at which the authority intends to act on the proposed plan. The bill would require that all bidders' conferences convened by the authority include a presentation of the plan and the state's small business participation goals.~~

~~The bill would provide that contracts financed by the authority with bond proceeds from the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century shall be subject to the provisions of the Small Business Procurement and Contract Act.~~

~~Existing law requires the authority to prepare, publish, adopt, and submit to the Legislature a business plan containing specified elements beginning January 1, 2012, and every 2 years thereafter.~~

~~This bill would require the authority to include in that business plan or in an addendum a strategy for ensuring the participation of California-certified small businesses in contracts awarded by the authority with state funds, or eligible federal funds during all phases of the project. The bill would also require the authority to adopt, by July 31, 2012, a small business, microbusiness, and disabled veteran business enterprise outreach and retention plan.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no-yes.~~

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 14211 is added to the Unemployment*
- 2 *Insurance Code, to read:*

1 14211. (a) (1) Beginning program year 2012, an amount
2 equal to at least 25 percent of funds available under Title I of the
3 federal Workforce Investment Act of 1998 (Public Law 105-220)
4 provided to local workforce investment boards for adults and
5 dislocated workers shall be spent on workforce training programs.
6 This minimum may be met either by spending 25 percent of those
7 base formula funds on training or by combining a portion of those
8 base formula funds with leveraged funds as specified in subdivision
9 (b).

10 (2) Beginning program year 2016, an amount equal to at least
11 30 percent of funds available under Title I of the federal Workforce
12 Investment Act of 1998 (Public Law 105-220) provided to local
13 workforce investment boards for adults and dislocated workers
14 shall be spent on workforce training programs. This minimum may
15 be met either by spending 30 percent of those base formula funds
16 on training or by combining a portion of those base formula funds
17 with leveraged funds as specified in subdivision (b).

18 (3) Expenditures that shall count toward the minimum
19 percentage of funds shall include only training services as defined
20 in Section 2864(d)(4)(D) of Title 29 of the United States Code and
21 Sections 663.300 and 663.508 of Title 20 of the Code of Federal
22 Regulations, including all of the following:

23 (A) Occupational skills training, including training for
24 nontraditional employment.

25 (B) On-the-job training.

26 (C) Programs that combine workplace training with related
27 instruction, which may include cooperative education programs.

28 (D) Training programs operated by the private sector.

29 (E) Skill upgrading and retraining.

30 (F) Entrepreneurial training.

31 (G) Job readiness training.

32 (H) Adult education and literacy activities provided in
33 combination with services described in any of subparagraphs (A)
34 to (G), inclusive.

35 (I) Customized training conducted with a commitment by an
36 employer or group of employers to employ an individual upon
37 successful completion of the training.

38 (b) (1) Local workforce investment boards may receive a credit
39 of up to 10 percent of their adult and dislocated worker formula
40 fund base allocations for public education and training funds and

1 *private resources from industry and from joint labor-management*
2 *trusts that are leveraged by a local workforce investment board*
3 *for training services described in paragraph (3) of subdivision*
4 *(a). This credit may be applied toward the minimum training*
5 *requirements in paragraphs (1) and (2) of subdivision (a).*

6 *(A) Leveraged funds that may be applied toward the credit*
7 *allowed by this subdivision shall only include the following:*

8 *(i) Federal Pell Grants established under Title IV of the Higher*
9 *Education Act of 1965 (20 U.S.C. Sec. 1070 et seq.).*

10 *(ii) Programs authorized by the Workforce Investment Act of*
11 *1998 (Public Law 105-220).*

12 *(iii) Trade adjustment assistance.*

13 *(iv) Department of Labor National Emergency Grants.*

14 *(v) Match funds from employers, industry, and industry*
15 *associations.*

16 *(vi) Match funds from joint labor-management trusts.*

17 *(vii) Employment training panel grants.*

18 *(B) Credit for leveraged funds shall only be given if the local*
19 *workforce investment board keeps records of all training*
20 *expenditures it chooses to apply to the credit. Training expenditures*
21 *may only be applied to the credit if the relevant training costs can*
22 *be independently verified by the Employment Development*
23 *Department and training participants must be coenrolled in the*
24 *federal Workforce Investment Act of 1998 performance monitoring*
25 *system.*

26 *(2) The use of leveraged funds to partially meet the training*
27 *requirements specified in paragraphs (1) and (2) of subdivision*
28 *(a) is the prerogative of a local workforce investment board. Costs*
29 *arising from the recordkeeping required to demonstrate compliance*
30 *with the leveraging requirements of this subdivision are the*
31 *responsibility of the board.*

32 *(c) Beginning program year 2012, the Employment Development*
33 *Department shall calculate for each local workforce investment*
34 *board, within six months after the end of the second program year*
35 *of the two-year period of availability for expenditure of federal*
36 *Workforce Investment Act of 1998 funds, whether the local*
37 *workforce investment board met the requirements of subdivision*
38 *(a). The Employment Development Department shall provide to*
39 *each local workforce investment board its individual calculations*
40 *with respect to the expenditure requirements of subdivision (a).*

1 (d) A local workforce investment area that does not meet the
2 requirements of subdivision (a) shall submit a corrective action
3 plan to the Employment Development Department that provides
4 reasons for not meeting the requirements and describes actions
5 taken to address the identified expenditure deficiencies. A local
6 workforce investment area shall provide a corrective action plan
7 to the Employment Development Department pursuant to this
8 section within 90 days of receiving the calculations described in
9 subdivision (c).

10 (e) For the purpose of this section, “program year” has the
11 same meaning as provided in Section 667.100 of Title 20 of the
12 Code of Federal Regulations.

13 SEC. 2. No reimbursement shall be made pursuant to Part 7
14 (commencing with Section 17500) of Division 4 of Title 2 of the
15 Government Code for costs mandated by the state pursuant to this
16 act. It is recognized, however, that a local agency or school district
17 may pursue any remedies to obtain reimbursement available to it
18 under Part 7 (commencing with Section 17500) and any other
19 provisions of law.

20 ~~SECTION 1. The Legislature finds and declares all of the~~
21 ~~following:~~

22 ~~(a) In order to keep faith with the promise to promote California~~
23 ~~jobs following the passage of the Safe, Reliable High-Speed~~
24 ~~Passenger Train Bond Act for the 21st Century, the state should~~
25 ~~aid, counsel, assist, and protect, to the maximum extent possible,~~
26 ~~the interests of small businesses, including microbusinesses.~~

27 ~~(b) California’s microbusinesses are known to bring real~~
28 ~~diversity to local economies and the state and deserve a fair share~~
29 ~~of contracts awarded for the high-speed rail project. Although~~
30 ~~microbusinesses comprise over 80 percent of California’s certified~~
31 ~~small businesses, and while it was the state’s intent to afford~~
32 ~~microbusinesses the same opportunities as other small businesses~~
33 ~~in competing for state contracts, many microbusiness owners are~~
34 ~~disadvantaged when competing against their larger small business~~
35 ~~counterparts. Data compiled by the Department of General Services~~
36 ~~shows that of the \$2.4 billion of contract dollars issued by state~~
37 ~~agencies to small businesses and microbusinesses in fiscal year~~
38 ~~2008–09, microbusinesses were awarded only 37 percent, or \$866~~
39 ~~million worth of state contracting. Moreover, of the 103,371~~
40 ~~contracts issued during the same timeframe, microbusinesses~~

1 received only 42,140, or 41 percent of the contracts issued by the
2 state:

3 (e) It is beneficial to the state to promote and facilitate the fullest
4 possible participation by California workers to train for new jobs
5 and careers in today's global economy.

6 (d) Therefore, it is essential to ensure that a fair proportion of
7 the total purchases and contracts or subcontracts for property and
8 services for California's high-speed rail system be placed with
9 these microbusinesses:

10 SEC. 2. Section 14838.1 of the Government Code is amended
11 to read:

12 14838.1. (a) In order to encourage the participation of small
13 businesses in the construction, alteration, demolition, repair, or
14 improvement, of the state's infrastructure, as provided in the
15 infrastructure-related bond acts of 2006 and 2008, as described in
16 subdivision (e), each state agency awarding contracts financed
17 with the proceeds of these bonds shall do all of the following:

18 (1) Establish a 25 percent small business participation goal in
19 all contracts it financed with the proceeds of the
20 infrastructure-related bond acts of 2006 and 2008:

21 (2) Advertise, in the California State Contracts Register, all
22 upcoming opportunities to bid on contracts for projects funded by
23 the infrastructure-related bond acts of 2006 and 2008, described
24 in subdivision (e), and include in the advertisement an Internet
25 link to information for prospective bidders, including, but not
26 limited to, general bidding procedures and how to properly prepare
27 a bid for those contracts:

28 (3) Provide information to California small businesses regarding
29 training and technical assistance that is available to assist these
30 small businesses in understanding and bidding on contracts for
31 projects funded by the infrastructure-related bond acts of 2006 and
32 2008, described in subdivision (e):

33 (b) For purposes of this section, "small business" has the same
34 meaning as set forth in subdivision (d) in Section 14837:

35 (c) For purposes of this section, all of the following measures
36 are deemed to be the infrastructure-related bond acts of 2006 and
37 2008:

38 (1) The Highway Safety, Traffic Reduction, Air Quality, and
39 Port Security Bond Act of 2006 (Chapter 12.49 (commencing with
40 Section 8879.20) of Division 1 of the Government Code):

~~(2) The Housing and Emergency Shelter Trust Fund Act of 2006 (Part 12 (commencing with Section 53540) of Division 31 of the Health and Safety Code).~~

~~(3) The Kindergarten-University Public Education Facilities Bond Act of 2006 (Part 69 (commencing with Section 101000) of the Education Code).~~

~~(4) The Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code).~~

~~(5) The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).~~

~~(6) The Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code).~~

~~(d) For the purposes of this section, “state agency” includes each agency provided for in Section 12800 and each state entity included in Section 10335.7 of the Public Contract Code in which the head of the agency is appointed by the Governor. For the purposes of this section, “state agency” also includes the High-Speed Rail Authority.~~

~~(e) This section does not require the expenditure of the proceeds of the sale of the bonds described in this section, except as permitted by the measure authorizing the issuance of the bond.~~

~~(f) On or before August 1, 2009, and annually thereafter, each state agency that has awarded any contract financed with the proceeds of the infrastructure-related bond acts of 2006 and 2008 in the previous fiscal year shall report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by these bonds to the total contract dollars for contracts funded by these bonds. If an agency did not meet its participation goal, then the agency shall include in its report a plan of action to meet its participation goal during the current fiscal year.~~

~~SEC. 3. Section 14838.6 is added to the Government Code, to read:~~

~~14838.6. (a) The High-Speed Rail Authority, with the assistance of the department, shall prepare a small business, microbusiness, and disabled veteran business enterprise outreach~~

1 and retention plan in order to ensure that the authority annually
2 meets the small business participation goal established by
3 Executive Order S-02-06. In developing the plan, the authority
4 shall consider examples of existing small business programs used
5 by other public agencies in California and the United States.

6 (b) The plan required by this section shall be adopted by July
7 31, 2012. Prior to the adoption of the plan, the authority shall hold
8 a hearing on the draft plan at a monthly board meeting held at least
9 one month before the board meeting at which the authority intends
10 to act on the proposed plan. Both the draft plan and the adopted
11 plan shall be posted on the homepage of the authority's Internet
12 Web site. The authority shall include in all its procurement
13 documents a summary of the plan and a link to the entire plan on
14 its Internet Web site and shall implement the outreach strategy.

15 (c) All bidders' conferences convened by the authority shall
16 include a presentation of the plan and the state's small business
17 participation goals. The authority shall request a representative of
18 the department to attend all bidders' conferences and to answer
19 all questions regarding this chapter.

20 SEC. 4. Section 185033 of the Public Utilities Code is amended
21 to read:

22 185033. (a) The authority shall prepare, publish, adopt, and
23 submit to the Legislature, not later than January 1, 2012, and every
24 two years thereafter, a business plan. At least 60 days prior to the
25 publication of the plan, the authority shall publish a draft business
26 plan for public review and comment. The draft plan shall also be
27 submitted to the Senate Committee on Transportation and Housing,
28 the Assembly Committee on Transportation, the Senate Committee
29 on Budget and Fiscal Review, and the Assembly Committee on
30 Budget. The business plan shall identify all of the following: the
31 type of service the authority anticipates it will develop, such as
32 local, express, commuter, regional, or interregional; a description
33 of the primary benefits the system will provide; a forecast of the
34 anticipated patronage, operating and maintenance costs, and capital
35 costs for the system; an estimate and description of the total
36 anticipated federal, state, local, and other funds the authority
37 intends to access to fund the construction and operation of the
38 system; and the proposed chronology for the construction of the
39 eligible corridors of the statewide high-speed train system. The
40 business plan shall also include a discussion of all reasonably

1 foreseeable risks the project may encounter, including, but not
2 limited to, risks associated with the project's finances, patronage,
3 right-of-way acquisition, environmental clearances, construction,
4 equipment, and technology, and other risks associated with the
5 project's development. The plan shall describe the authority's
6 strategies, processes, or other actions it intends to utilize to manage
7 those risks.

8 (b) (1) In addition to the requirements of subdivision (a), the
9 business plan shall include, but need not be limited to, all of the
10 following elements:

11 (A) Using the most recent patronage forecast for the system,
12 develop a forecast of the expected patronage and service levels
13 for the Phase 1 corridor as identified in paragraph (2) of subdivision
14 (b) of Section 2704.04 of the Streets and Highways Code and by
15 each segment or combination of segments for which a project level
16 environmental analysis is being prepared for Phase 1. The forecast
17 shall assume a high, medium, and low level of patronage and a
18 realistic operating planning scenario for each level of service.
19 Alternative fare structures shall be considered when determining
20 the level of patronage.

21 (B) Based on the patronage forecast in subparagraph (A),
22 develop alternative financial pro formas for the different levels of
23 service, and identify the operating break-even points for each
24 alternative. Each pro forma shall assume the terms of subparagraph
25 (J) of paragraph (2) of subdivision (c) of Section 2704.08 of the
26 Streets and Highways Code.

27 (C) Identify the expected schedule for completing environmental
28 review, and initiating and completing construction for each segment
29 of Phase 1.

30 (D) Identify the source of federal, state, and local funds available
31 for the project that will augment funds from the bond act and the
32 level of confidence for obtaining each type of funding.

33 (E) Identify written agreements with public or private entities
34 to fund components of the high-speed rail system, including
35 stations and terminals, any impediments to the completion of the
36 system, such as the inability to gain access to existing railroad
37 rights-of-way.

38 (F) Identify alternative public-private development strategies
39 for the implementation of Phase 1.

1 ~~(2) To the extent feasible, the business plan should draw upon~~
2 ~~information and material developed according to other~~
3 ~~requirements, including, but not limited to, the preappropriation~~
4 ~~review process and the preexpenditure review process in the Safe,~~
5 ~~Reliable High-Speed Passenger Train Bond Act for the 21st~~
6 ~~Century pursuant to Section 2704.08 of the Streets and Highways~~
7 ~~Code. The authority shall hold at least one public hearing on the~~
8 ~~business plan and shall adopt the plan at a regularly scheduled~~
9 ~~meeting. When adopting the plan, the authority shall take into~~
10 ~~consideration comments from the public hearing and written~~
11 ~~comments that it receives in that regard, and any hearings that the~~
12 ~~Legislature may hold prior to adoption of the plan.~~

13 ~~(e) In the business plan to be submitted on January 1, 2012, or~~
14 ~~as an addendum to that plan to be submitted on March 1, 2012,~~
15 ~~the authority shall include a strategy for ensuring the participation~~
16 ~~of California-certified small businesses in contracts awarded by~~
17 ~~the authority with state funds, or eligible federal funds, during all~~
18 ~~phases of the project.~~